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Agenda item 6

REPORT ON OTHER MEETINGS AND ACTIVITIES

Note by the Secretariat

Addendum

Contribution by the Australian Human Rights and Equal Opportunity Commission

1. The attention of the Preparatory Committee is drawn to the attached document prepared by Mr. Brian Burdekin, Federal Human Rights Commissioner, Australian Human Rights and Equal Opportunity Commission (Australia), entitled "Principles relating to the status of national institutions - recommendations, resolutions and relevant decisions of international meetings related to, or convened in preparation for, the 1993 World Conference on Human Rights".

2. The document was prepared as a background paper for the United Nations meeting of representatives of national institutions and organizations promoting tolerance and racial harmony and combating racism and racial discrimination (Sydney, Australia, 19-23 April 1993) organized by the Centre for Human Rights in cooperation with the Australian Human Rights and Equal Opportunity Commission.

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PRINCIPLES RELATING TO THE STATUS OF NATIONAL INSTITUTIONS; AN ANALYSIS OF RECOMMENDATIONS, RESOLUTIONS AND RELEVANT DECISIONS OF INTERNATIONAL MEETINGS RELATING TO, OR CONVENED IN PREPARATION FOR, THE 1993 WORLD CONFERENCE ON HUMAN RIGHTS */

April 1993

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*/ The opinions expressed in this paper are those of the authors.

The following analysis takes the "Principles Relating to the Status of National Institutions", adopted at the United Nations Workshop on National Institutions for the Promotion and Protection of Human Rights, held in Paris from 7-9 October 1991,[1] - and compares these "Principles" and the accompanying Commission on Human Rights Resolution to recommendations, resolutions or statements arising from a number of recent Regional Meetings and Workshops conducted under United Nations auspices. These are:

- the Regional Meeting for Africa, held in Tunis from 2-6 November 1992, preparatory to the World Conference on Human Rights;

- the Regional Meeting for Latin America and the Caribbean, held in San Jose from 18-22 January 1993;

- the Regional Meeting for Asia, held in Bangkok from 29 March to 2 April 1993; and

- the Asia Pacific Workshop on Human Rights, held in Jakarta from 26-28 January 1993 (convened jointly by the Centre for Human Rights and the Government of Indonesia).

Also included are Recommendations which emerged from:

- the Commonwealth Workshop on National Institutions, held in Ottawa from 30 September to 2 October 1992.

The purpose of this paper is to indicate the extent of the common elements in these recommendations, resolutions and statements with a view to assisting preparations for the meeting of National Institutions to be convened in conjunction with the World Conference on Human Rights. (Inclusion of particular elements of the declarations and statements referred to is in no way intended to minimize the importance of considering those documents in their entirety).

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[1]Transmitted by the Commission on Human Rights, in its Resolution 1992/54 of 3 March 1992, through the Economic and Social Council to the General Assembly for adoption, and which the Economic and Social Council has so transmitted.

Importance of national institutions

Commission on Human Rights Resolution 1992/54

> Recalling its relevant resolutions and those of the General Assembly concerning national institutions for the promotion and protection of human rights, notably its resolutions 1990/73 of 7 March 1990 and 1991/27 of 5 March 1991, and Assembly resolutions 44/64 of 8 December 1989 and 46/124 of 17 December 1991 ...
>
> Affirming that priority should be accorded to the development of appropriate arrangements at the national level to ensure the effective implementation of international human rights standards;
>
> Convinced of the important role that can be played by institutions at the national level in promoting and protecting human rights and fundamental freedoms and in developing and enhancing public awareness of those rights and freedoms ...
>
> ... 1. Reaffirms the importance of developing, in accordance with national legislation, effective national institutions for the promotion and protection of human rights ...
>
> ... 4. Encourages initiatives on the part of Governments and regional, international, inter-governmental and non-governmental organisations to strengthen existing national institutions and to establish such institutions where they do not exist ...

Paris Principles:

> 1. A national institution shall be vested with competence to promote and protect human rights.

African Regional Meeting: Final Declaration ("Tunis Declaration")

> 4. Responsibility for the implementation and promotion devolves primarily on Governments. The component institutions, organisations and structures of society also play an important role in safeguarding and disseminating these rights; they should therefore be strengthened and encouraged.

African Regional Meeting: Resolution AFRM/1:

> ... 5. Calls upon Governments, with the assistance and support of the international community, to enhance their national institutions for the protection and promotion of human rights ...

African Regional Meeting: Resolution AFRM/2:

> Bearing in mind General Assembly resolution 33/46 of 14 December 1978 setting out the guidelines on the structure and functioning of national institutions for the promotion and protection of human rights, as well as the principles relating to the status of national institutions annexed to Commission on Human Rights resolution 1992/54 of 3 March 1992;
>
> Recalling the African Charter on Human and Peoples' Rights which, in Article 26, requires all States parties to allow the establishment of national institutions entrusted with the promotion and protection of human and peoples' rights and to strengthen existing institutions;
>
> Emphasising the role of national institutions in the promotion and dissemination of human rights, both individual and collective;
>
> ... 2. Encourages States to be guided by the principles of General Assembly resolution 33/46 and Commission on Human Rights resolution 1992/54 in establishing, within the framework of their national legislation, national institutions for the promotion and protection of human rights ...
>
> ...4. Reaffirms the importance of national institutions in contributing to the democratic process and to the strengthening of the rule of law ...

Asian Regional Meeting: Bangkok Declaration

> ... 9. Recognise further that States have the primary responsibility for the promotion and protection of human rights through appropriate infrastructure and mechanisms, and also recognise that remedies must be sought and provided primarily through such mechanisms and procedures ...
>
> 24. Welcome the important role played by national institutions in the genuine and constructive promotion of human rights ...

Asia-Pacific Workshop on Human Rights: Chairman's Statement

> National human rights institutions have an important role to play in protecting against human rights violations as well as developing promotional and educational activities ...

Commonwealth Workshop

> ... Convinced of the important role which such institutions can play in strengthening respect for human rights both on an individual and collective basis and in applying universal standards of human rights in different societies ...

Recommend that where they have not already done so, Commonwealth Governments should establish national institutions specifically responsible for the promotion and protection of human rights.

Indivisibility of human rights

Commission on Human Rights Resolution 1992/54:

> ... Stressing the importance of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments for promoting respect for, and observance of, human rights and fundamental freedoms ...

African Regional Meeting: Tunis Declaration

> 6. The principle of the indivisibility of human rights is sacrosanct. Civil and political rights cannot be dissociated from economic, social and cultural rights. None of these rights takes precedence over the others.

Regional Meeting for Latin America and the Caribbean: San Jose Declaration

> ... We hold that interdependence and indivisibility of civil, political, economic, social and cultural rights are the basis for consideration of the question of human rights, and therefore the exercise of some cannot and must not be disallowed on the pretext that full enjoyment of the others has not yet been achieved.

Asian Regional Meeting: Bangkok Declaration

> ...10. Reaffirm the interdependence and indivisibility of economic, social, cultural, civil and political rights, and the need to give equal emphasis to all categories of human rights ...

Asia-Pacific Workshop: Chairman's Statement

> ... Commitment to the principle of indivisibility will promote international co-operation and avoid unproductive confrontation. In the same way, both the individual and the collective aspects of human rights must be considered concurrently and in a balanced manner.

Form of national institution a matter for determination by each nation

Commission on Human Rights Resolution 1992/54:

> 1. Reaffirms the importance of developing, *in accordance with national legislation*, effective national institutions ...

African Regional Meeting: Tunis Declaration

> 5. The observance and promotion of human rights are undeniably a global concern and an objective to the realisation of which all States, without exception, are called upon to contribute. However, no ready-made model can be prescribed at the universal level since the historical and cultural realities of each nation and the traditions, standards and values of each people cannot be disregarded.

African Regional Meeting: Resolution AFRM/2:

> 2. Encourages States to be guided by the principles of General Assembly Resolution 33/46 and Commission on Human Rights resolution 1992/54 in establishing, *within the framework of their national legislation*, national institutions for the promotion and protection of human rights ...

Asian Regional Meeting: Bangkok Declaration

> 24. Welcome the important and constructive role played by national institutions in the genuine and constructive promotion of human rights, and believe that the conceptualisation and eventual establishment of such institutions are best left for the States to decide ...

Asia - Pacific Workshop: Chairman's Statement:

> While human rights principles are universal and standards have been negotiated and accepted at the international level, responsibility for the implementation of these norms rests primarily at the state level. Nevertheless it must be recognised that procedures and machinery for implementation will vary from state to state.
>
> ... National institutions should be considered in the context of the developmental process of a country.

Commonwealth Workshop:

> 1. ... The form of such institutions is a matter for determination by each country, in the light of national conditions and circumstances (including international and - where applicable - regional instruments on human rights, particularly those instruments to which each country is a party).

Importance of comparative experience and international co-operation

Commission on Human Rights Resolution 1992/54:

> ... 3. Encourages all Member States to take appropriate steps to promote the exchange, including by national institutions, of information and experience concerning the establishment and operation of such national institutions ...
>
> 5. Requests the Secretary-General to respond favourably to requests from Member States for assistance in the establishment and strengthening of national institutions for the promotion and protection of human rights as part of the programme of advisory services and technical co-operation in the field of human rights ...
>
> 6. Requests the Centre for Human Rights to continue its efforts in order to enhance co-operation between the United Nations and regional and national institutions, particularly in the fields of advisory services and technical assistance and of information and education, including within the framework of the World Public Information Campaign for Human Rights ...

African Regional Meeting: Resolution AFRM/2:

> 2. Encourages States to be guided by the principles of General Assembly Resolution 33/46 and Commission on Human Rights resolution 1992/54 in establishing, *within the framework of their national legislation*, national institutions for the promotion and protection of human rights ...
>
> 3. Encourages all States Members of the United Nations, along with States of the African region, to establish and promote the exchange of information and experience relating to the creation and strengthening of national institutions entrusted with the promotion and protection of human rights ...
>
> 5. Encourages the national institutions of States of the African region to cooperate with the organisations of the United Nations system, regional institutions and national institutions of other countries with competence in the promotion and protection of human rights;
>
> 6. Calls for the strengthening of cooperation between national institutions of the African region;
>
> 7. Requests the Secretary-General of the United Nations to consider favourably applications for assistance made by African Member States regarding the creation and strengthening of national institutions within the framework of the United Nations programme of advisory services and technical cooperation in the field of human rights.

Asian Regional Meeting: Bangkok Declaration

26. Reiterate the need to explore the possiblities of establishing regional arrangements for the promotion and protection of human rights in Asia ...

27. Reiterate further the need to explore ways to generate international cooperation and financial support for education and training in the field of human rights at the national level and for the establishment of national infrastructures to promote and protect human rights if requested by States ...

Asia - Pacific Workshop: Concluding statement

... countries wishing to create such institutions should be able to benefit from the United Nations programme of advisory services and technical assistance in the field of human rights.

... Discussions at regional meetings are a valuable forum to enable governments and national institutions to exchange experiences and strengthen support for the promotion and protection of human rights.

Commonwealth Workshop:

3. In the establishment and further development of effective national institutions appropriate to national conditions, attention should be given to the experience of other national institutions.

4. In particular, regard should be had in the establishment and operation of national institutions to the Principles Relating to the Status of National Institutions, annexed to Commission on Human Rights Resolution 1992/54 ...

7. Commonwealth Governments and relevant international organisations should recognise that the establishment and operation of national institutions for promotion and protection of human rights is an important subject for international co-operation, including by the provision of technical assistance where requested and by facilitating co-operation directly between national institutions of different countries.

Relevance to national institutions of international instruments on human rights

Commission on Human Rights Resolution 1992/54:

> ... Affirming that priority should be accorded to the development of appropriate arrangements at the national level to ensure the effective implementation of international human rights standards ...

Paris Principles:

> ... A national institution shall have, inter alia, the following responsibilities:
> ...
> (b) To promote and ensure the harmonisation of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
>
> (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
>
> (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and where necessary, to express an opinion on the subject, with due respect for their independence;

African Regional Meeting: Resolution AFRM/1:

> Emphasising that States, in adhering to the Charter of the United Nations and adopting the Universal Declaration of Human Rights, have pledged themselves to respect, promote and protect the human rights and fundamental freedoms of all, without distinction as to race, sex, language, religion, nationality or place of origin;
>
> Aware that Governments, and their national institutions, have a primary responsibility to promote and protect all human rights and fundamental freedoms, while at the same time taking the necessary measures to fulfil their obligations as parties to the various international human rights instruments ...

African Regional Meeting: Resolution AFRM/2:

> 4. Reaffirms the importance of national institutions in contributing to the democratic process and to the strengthening of the rule of law and in providing, on an advisory basis, views, recommendations, proposals and reports concerning all matters relating to the promotion and protection of human rights, by inter alia:
>
> (a) Advising on the adoption and harmonisation of national legislation, regulations and practices with the international human rights instruments ...

Regional Meeting for Latin America and the Caribbean: San Jose Declaration

... 13. We draw attention to the urgent need ... for Governments to set up national commissions for the monitoring and follow-up of the Convention on the Rights of the Child, made up of governmental and non-governmental organisations ...

Asia-Pacific Workshop: Chairman's Statement

While human rights principles are universal and standards have been negotiated and accepted at the international level, responsibility for the implementation of these norms rests primarily at the state level.

Commonwealth Workshop:

... Convinced of the important role which such institutions can play in strengthening respect for human rights both on an individual and collective basis and in applying universal standards of human rights in different societies ...

... The form of such institutions is a matter for determination by each country, in the light of national conditions and circumstances (including international and - where applicable - regional instruments to which each country concerned is a party).

... Where national institutions have already been established, Commonwealth Governments (in co-operation with those institutions) should review their structure, jurisdiction, independence and powers to ensure their full effectiveness *and appropriate linkage to international and - where applicable - regional instruments on human rights.*

... In particular, regard should be had in the establishment and operation of national institutions to the Principles Relating to the Status of National Institutions, annexed to Commission on Human Rights Resolution 1992/54, particularly in relation to:

...

... the possibility, where appropriate, of such institutions monitoring national compliance with international and regional instruments.

Legislative or constitutional basis of national institutions

Paris Principles:

> 2. A national institution shall be given as broad a mandate as possible, which shall be clearly set out in a constitutional or legislative text, specifying its composition and its sphere of competence.

African Regional Meeting: Resolution AFRM/2:

> ... 2. Encourages States ... in establishing, within the framework of their national legislation, national institutions entrusted with the promotion and protection of human rights ...

Commonwealth Workshop:

> 5. The independence of national institutions should be guaranteed and be seen to be guaranteed *including preferably by entrenchment in the Constitution or by legislation.*

Responsibilities of national institutions

Paris Principles

A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights. The national institution may decide to publicise them. These opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

(i) Any legislative or administrative provisions, as well as provisions relating to judicial organisation, intended to preserve and extend the protection of human rights. In that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental provisions of human rights. It shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

(b) To promote and ensure the harmonisation of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To co-operate with the United Nations and any other organisation in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of promotion and protection of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicise human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

African Regional Meeting: Resolution AFRM/2:

4. Reaffirms the importance of national institutions in contributing to the democratic process and to the strengthening of the rule of law and in providing, on an advisory basis, views, recommendations, proposals and reports concerning all matters relating to the promotion and protection of human rights, by inter alia:

(a) Advising on the adoption and harmonisation of national legislation, regulations and practices with the international human rights instruments;

(b) Providing views, suggestions and recommendations in connection with claims or complaints concerning human rights violations brought to their notice;

(c) Making proposals for practical measures to be taken by Governments and competent authorities to ensure conformity between practice and legal regulations;

(d) Contributing to the preparation of reports to be submitted by States to United Nations organs and committees, in compliance with their treaty obligations ...

Regional Meeting for Latin America and the Caribbean: San Jose Declaration

... 13. We draw attention to the urgent need to establish mechanisms and programmes fro the defence and protection of children and adolescents, in particular, in relation to abandoned and street children, *and for Governments to set up national commissions for the monitoring and follow-up of the Convention on the Rights of the Child,* made up of governmental and non-governmental organisations ...

Asia-Pacific Workshop:

National human rights institutions have an important role to play in protecting against human rights violations as well as developing promotional and educational

activities (such as educational programmes for the general public and training programmes for law enforcement personnel, both civilian and military, and government officials) aimed at ensuring that human rights are enjoyed by everyone.

Commonwealth Workshop:

3. In the establishment and further development of effective national institutions appropriate to national conditions attention should be given to the experience of other national institutions.

4. In particular, regard should be had in the establishment and operation of national institutions to the Principles Relating to the Status of National Institutions, annexed to Commission on Human Rights Resolution 1992/54, particularly in relation to:

- the jurisdiction and functions of national institutions, including dealing with complaints, review of legislative and administrative measures, and public education and promotion of awareness of and respect for human rights;

- the need for national institutions to provide effective and accessible remedies in relation to complaints of violation of human rights;

- the need to ensure that national institutions are accessible and credible to individuals and groups in disadvantaged sections of society;

- the need for national institutions to be able to work with non-government organisation; and

- the possibility, where appropriate, of such institutions monitoring national compliance with international and regional instruments.

Independence of national institutions

Commission on Human Rights Resolution 1992/54:

> 1. Reaffirms the importance of developing, in accordance with national legislation, effective national institutions for the promotion and protection of human rights and of ensuring the pluralism of their membership *and their independence* ...

Paris Principles:

> 2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.
>
> 3. In order to ensure a stable mandate for the members of the institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

African Regional Meeting: Resolution AFRM/2

> 2. Encourages States to be guided by the principles of General Assembly resolution 33/46 and Commission on Human Rights resolution 1992/54 in establishing, within the framework of their national legislation, national institutions for the promotion and protection of human rights ...

Commonwealth Workshop:

> 5. The independence of national institutions should be guaranteed and be seen to be guaranteed including preferably by entrenchment in the Constitution or by legislation.
>
> 6. National institutions should be provided with adequate and adequately secure resources for the discharge of their functions. Provision of adequate resources should preferably be guaranteed by legislation or by entrenchment in the constitution.
>
> 7. National institutions should have adequate freedom and resources to publish and disseminate the results of their enquiries.

Composition of national institutions and relations with non-government organisations

Commission on Human Rights resolution 1992/54:

> 1. Reaffirms the importance of developing, in accordance with national legislation, effective national institutions for the promotion and protection of human rights *and of ensuring the pluralism of their membership* and their independence ...

Paris Principles

> 1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective co-operation to be established with, or through the presence of, representatives of:
>
> (a) Non-governmental organisations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organisations, for example, associations of lawyers, doctors, journalists and eminent scientists;
>
> (b) Trends in philosophical or religious thought;
>
> (c) Universities and qualified experts;
>
> (d) Parliament;
>
> (e) Government departments (if they are included, these representatives should participate in the deliberations only in an advisory capacity).
>
> ...Within the framework of its operation, the national institution shall:
>
> ...
>
> (7) In view of the fundamental role played by the non-governmental organisations in expanding the work of the national institutions, develop relations with the non-governmental organisations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialised areas.

African Regional Meeting: Final Declaration ("Tunis Declaration")

> 4. Responsibility for the implementation and promotion devolves primarily on Governments. The component institutions, organisations and structures of society also play an important role in safeguarding and disseminating these rights; they should therefore be strengthened and encouraged.

Regional Meeting for Latin America and the Caribbean: San Jose Declaration

... 13. We draw attention to the urgent need ... for Governments to set up national commissions for the monitoring and follow-up of the Convention on the Rights of the Child, made up of governmental and non-governmental organisations ...

Asian Regional Meeting: Bangkok Declaration

25. Acknowledge the importance of co-operation and dialogue between governments and non-governmental organisations on the basis of shared values as well as mutual respect and understanding in the promotion of human rights ...

Commonwealth Workshop:

4. ... regard should be had, in the establishment and operation of national institutions, to the Principles Relating to the Status of National Institutions, annexed to Commission on Human Rights Resolution 1992/54, particularly in relation to:

...

- the need to ensure that national institutions are accessible and credible to individuals and groups in disadvantaged sections of society;

- the need for national institutions to be able to work with non-government organisations ...

ADDITIONAL POINTS ADDRESSED IN THE "PARIS PRINCIPLES"

Methods of operation

Paris Principles

Within the framework of its operation, the national institution shall:

(a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or any petitioner;

(b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

(c) Address public opinion directly or through any press organ, particularly in order to publicise its opinions and recommendations;

(d) Meet on a regular basis and wherever necessary in the presence of all its members after they have been duly convened;

(e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

(f) Maintain consultation with the other bodies, whether juridical or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);

(g) In view of the fundamental role played by the non-governmental organisations in expanding the work of the national institutions, develop relations with the non-governmental organisations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialised areas.

Additional principles concerning the status of commissions with quasi-judicial competence

Paris Principles:

A national institution may be authorised to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organisations, associations of trade unions or any other representative organisations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

(a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

(b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

(c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

(d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

1992/54. National institutions for the promotion and protection of human rights

The Commission on Human Rights,

Recalling its relevant resolutions and those of the General Assembly concerning national institutions for the promotion and protection of human rights, notably its resolutions 1990/73 of 7 March 1990 and 1991/27 of 5 March 1991, and Assembly resolutions 44/64 of 8 December 1989 and 46/124 of 17 December 1991,

Stressing the importance of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments for promoting respect for, and observance of, human rights and fundamental freedoms,

Affirming that priority should be accorded to the development of appropriate arrangements at the national level to ensure the effective implementation of international human rights standards,

Convinced of the important role that can be played by institutions at the national level in promoting and protecting human rights and fundamental freedoms and in developing and enhancing public awareness of those rights and freedoms,

Recognizing that the United Nations has played and should continue to play a catalytic role in assisting the development of national institutions,

Mindful in this regard of the guidelines on the structure and functioning of national institutions for the promotion and protection of human rights, endorsed by the General Assembly in its resolution 33/46 of 14 December 1978,

Recalling the recommendations contained in General Assembly resolution 45/155 of 18 December 1990 and Commission on Human Rights resolution 1991/30 of 5 March 1991 inviting the Preparatory Committee for the World Conference on Human Rights to examine ways and means by which the World Conference could encourage the establishment or strengthening of national institutions,

Welcoming the convening in Paris from 7 to 9 October 1991, by the Centre for Human Rights, of an international workshop on national institutions for the promotion and protection of human rights,

Noting with satisfaction the constructive participation of representatives of a number of national institutions for the promotion and protection of human rights in international seminars and workshops organized or sponsored by the United Nations and its Member States and in other United Nations activities,

1. Reaffirms the importance of developing, in accordance with national legislation, effective national institutions for the promotion and protection of human rights and of ensuring the pluralism of their membership and their independence;

2. Takes note of progress in this area and in particular of the increased effectiveness of national institutions for the promotion and protection of human rights, as well as of the efforts of the Centre for Human Rights to increase cooperation with regional and national institutions;

3. Encourages all Member States to take appropriate steps to promote the exchange, including by national institutions, of information and experience concerning the establishment and operation of such national institutions;

4. Encourages initiatives on the part of Governments and regional, international, intergovernmental and non-governmental organizations intended to strengthen existing national institutions and to establish such institutions where they do not exist;

5. Requests the Secretary-General to respond favourably to requests from Member States for assistance in the establishment and strengthening of national institutions for the promotion and protection of human rights as part of the programme of advisory services and technical cooperation in the field of human rights;

6. Requests the Centre for Human Rights to continue its efforts in order to enhance cooperation between the United Nations and regional and national institutions, particularly in the fields of advisory services and technical assistance and of information and education, including within the framework of the World Public Information Campaign for Human Rights;

7. Affirms the role of national institutions, where they exist, as appropriate agencies for the dissemination of human rights materials and other public information activities under the auspices of the United Nations;

8. Recognizes the important and constructive role that non-governmental organizations can play in cooperation with national institutions for the better promotion and protection of human rights;

9. Takes note with satisfaction and appreciation of the report of the International Workshop on National Institutions for the Promotion and Protection of Human Rights (E/CN.4/1992/43 and Add. 1 and 2);

10. Welcomes the guidance provided by the recommendations contained in the report of the International Workshop and in particular the principles relating to the status of commissions and their advisory role;

11. Decides to rename those principles the "Principles relating to the status of national institutions" and to transmit those Principles, annexed to the present resolution, to the General Assembly, through the Economic and Social Council, for adoption;

12. Requests the Secretary-General to publicize the proceedings of the International Workshop and to undertake follow-up activities;

13. Also requests the Secretary-General to transmit those proceedings to the Preparatory Committee for the World Conference on Human Rights and requests the Preparatory Committee to consider ways of promoting the Principles relating to the status of national institutions;

14. Further requests the Secretary-General to commence the planning of a follow-up international workshop in 1993, following the World Conference on Human Rights, and to submit a report on those preparations to the Commission at its forty-ninth session;

15. Requests the Secretary-General to give consideration to the results of the International Workshop in the preparation of a manual on national institutions;

16. Encourages Member States and competent bodies to give appropriate attention to national institutions for the promotion and protection of human rights in the context of their preparations for the World Conference on Human Rights;

17. Decides to continue its consideration of the question at its forty-ninth session as a sub-item under the agenda item entitled "Further promotion and encouragement of human rights and fundamental freedoms, including the question of the programme and methods of work of the Commission", in particular ways to study and promote the Principles relating to the status of national institutions.

52nd meeting
3 March 1992
[Adopted without a vote. See chap. XI.]

PRINCIPLES RELATING TO THE STATUS OF COMMISSIONS AND THEIR ADVISORY ROLE

Competence and responsibilities

1. A national institution shall be vested with competence to protect and promote human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, *inter alia*, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights. The national institution may decide to publicize them. These opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

(i) Any legislative or administrative provisions, as well as provisions relating to judicial organization, intended to preserve and extend the protection of human rights. In that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights. It shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

(b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other agency in the United Nations system, the regional institutions and the national institutions of other countries which are competent in the areas of the protection and promotion of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

- Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

- Trends in philosophical or religious thought;

- Universities and qualified experts;

- Parliament;

- Government departments (if they are included, these representatives should participate in the deliberations only in an advisory capacity);

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence;

3. In order to ensure a stable mandate for the members of the institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

1. Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

2. Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

3. Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

4. Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;

5. Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

6. Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the protection and promotion of human rights (in particular, ombudsmen, mediators and similar institutions);

7. In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to protecting and promoting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

ADDITIONAL PRINCIPLES CONCERNING THE STATUS OF COMMISSIONS WITH QUASI-JURISDICTIONAL COMPETENCE

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representive organizations. In such circumstances, and without prejudice

to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

1. Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

2. Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

3. Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

4. Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations on administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

In order to ensure that action is taken on the results of the Workshop, the participants recommend to the Commission on Human Rights that it should organize another seminar, which could be held after the 1993 World Conference.